

Docket No.: 1460.1034

Serial No. 10/025,861

REMARKS

In accordance with the foregoing, claims 1 and 2 are amended. Claims 1-8 are pending and under consideration.

STATUS OF CLAIMS

Claims 1-8 are pending herein and all thereof are rejected.

ITEM 3: REJECTION OF CLAIMS 1-5 FOR OBVIOUSNESS UNDER 35 U.S.C. 103 AS BEING UNPATENTABLE OVER *KLASSEN ET AL.* IN VIEW OF *SMITH ET AL.*

The rejection is respectfully traversed on the grounds that the present invention is not obvious over the combination of *Klassen et al.* and *Smith et al.*

The Examiner states that *Smith et al.* discloses the communication performance measuring equipment of the present invention. To the contrary, it is submitted that the communication performance measuring equipment that *Smith* discloses is comparable to the art disclosed as prior art in the present application (see Fig. 21 of the present application). That is, the communication performance measuring equipment in *Smith* is laid out so that it measures communication performance at the beginning of, or at the end of, the transmission path subject to evaluation. More specifically, the communication performance measuring equipment in *Smith* monitors traffic input to the very router which is the entrance or the exit of the transmission path subject to evaluation of the communication performance, and the traffic output from this router (see, Fig. 1 and col. 7, lines 12- 29). This is in exactly the same layout as that of *Klassen*.

Communication performance measuring equipment, as disclosed in *Klassen* and *Smith*, are limited to such layouts as described in the foregoing and, necessarily, cannot attain the objects or perform the functions, of those presented by a system in accordance with the present invention. For example, in the attached explanatory drawing of Exhibit A hereto, if the communication performance measuring equipment disclosed in *Klassen* or *Smith* tries to measure communication performance in a transmission path that connects, in various combinations, as they share the transmission path which is the backbone: server 1 and server 2 connected to the internet via different routers, router 1 and router 2; and client 1 and client 2 connected to the backbone via different access points, access point 1 and access point 2, the communication performance measuring equipment (WS1- WS4) would of course have to be connected to the routers 1 and 2, or the access points 1 and 2. Thus, if the router 1 is in Seattle and router the 2 is in Los Angeles, and access point 1 is in New York and access point 2 is in Miami, either there must be a communication performance measuring equipment in each area,

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or the equipment must be moved and transferred to each of the areas.

The present invention, on the other hand, is characterized in that evaluating communication performance on the communication path between a server subject to evaluation and a client subject to evaluation, is based on information collected in a pseudo-information transmission, where the information transmission via a communication path between a discretionary server and a discretionary client is pseudo-realized by an information transmission between a server selected as a subject of evaluation and communication performance measuring equipment.

Because of the characteristics of the communication performance measuring equipment of the present invention, the equipment can attain the object to evaluate the communication performance in communication paths connecting the combinations of various servers and clients, so long as the equipment is connected to one of the routers configuring the backbone shown in the explanatory drawing. (Exhibit A)

Thus, it is clear that neither Klassen nor Smith discloses or even suggests the technology to indirectly evaluate communication performance of a communication path between, for example, server 1 and client 1, by positioning the communication performance measuring equipment at a halfway point (e.g., at the router a in the backbone in the explanatory drawing of Exhibit A) of the communication path subject to communication performance evaluation, contrary to a technique as is disclosed in the present application.

Moreover, it is submitted to be very clear that means to realize the pseudo-information transmission between the server and the client by information transmission between the server and the communication performance measuring equipment are not disclosed in Klassen or Smith. This means corresponds to the delay estimating unit and the reply controlling unit in claim 1 of the present application. Furthermore, it should be noted that whereas the Examiner cites paragraph 51 of Klassen, that the Examiner points out as corresponding to the reply controlling unit in the present invention, does not indicate that Klassen has the unique feature of the reply controlling unit of the present invention (see, page 3 of Office Action). The patentable feature of the reply controlling unit of the present invention is a function to delay transmission of the acknowledge packet in response to the data packet the communication performance measuring equipment receives from the server by a certain time, estimated by the delay estimating circuit, in order to pseudo-realize information transmission between servers and clients.

Claim 1 is amended in the foregoing to clarify these features submitted to be unique to

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the present invention and to clearly patentably distinguish over the references of record. Further, since claims 2- 5 are dependent on claim 1, they inherit the patentable distinctions recited in claim 1 and accordingly should be allowed along with the allowance of claim 1.

ITEM 4: REJECTION OF CLAIM 6 FOR OBVIOUSNESS UNDER 35 U.S.C. 103 (a) OVER KLASSEN IN VIEW OF SMITH AND TAKAHARA; AND

ITEM 5: REJECTION OF CLAIMS 7 AND 8 FOR OBVIOUSNESS UNDER 35 U.S.C. 103 (a) OVER KLASSEN AND SMITH TAKEN FURTHER IN VIEW OF RAMANATHAN

The rejections are respectfully traversed.

Each of these dependent claims 6-8 depends directly or indirectly from claim 1 and inherits the patentably distinguishing features thereof as set forth in the foregoing, claims 6-8 as well should be deemed allowable over the art of record.

CONCLUSION

It is submitted that the foregoing has demonstrated the allowability of claim 1 over the art and rejections of record and, for at least the same reasons, the allowability of claims 2-8 which depend directly or indirectly from claim 1.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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